

**REMARKS**

In the communication, the Examiner indicates that the Amendment filed on April 28, 2005 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). In this regard, the Examiner indicates that the remaining claims are not readable on the elected invention because such claims are directed to the compounds of formula II, while Applicant has already received an action examining compounds of formula I.

In response to the communication, Applicants submit that the Examiner's position is improper because:

(1) the Examiner had not previously issued any actual election of species requirement (so there is no species previously elected by Applicant that is now outside the scope of the claimed invention),

**(2) formula II merely represents particularly preferable compounds within the scope of formula I** (see, e.g., page 11, lines 3-5), and

**(3) the Examiner previously examined claims 21-34, which recite compounds within formula II (i.e., since the Examiner could examine compounds within the scope of formula II, she should be able to examine claims reciting formula II itself).**

In regard to item (3) above, Applicants submit that since the compounds recited in claims 21-34 have not changed, the Examiner should at least be able to examine those claims, because the Examiner's position in the first paragraph on page 2 of the July 15, 2005 PTO communication

RESPONSE TO PTO COMMUNICATION  
U.S. Application No. 09/816,655

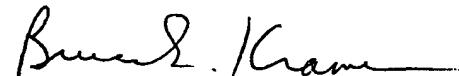
Attorney Docket No. Q58513

(i.e., that the compounds presented now are different from those previously examined) does not apply (since the compounds recited in claims 21-34 are the same as those previously examined).

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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